



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

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September 22, 2017

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DECISION

Nada Culver, Director and Senior Counsel	:	Protest to the Inclusion of
The Wilderness Society	:	Four Parcels in the September 2017
1660 Wynkoop Street, #850	:	Competitive Oil and Gas Lease Sale
Denver, CO 80202	:	
	:	
Brian Rutledge, Vice President	:	
The National Audubon Society	:	
4510 CR 82E	:	
Livermore, Colorado 80536	:	

Protest Denied

On June 1, 2017, the Bureau of Land Management (“BLM”) Utah State Office (“UTSO”) posted a Notice of Competitive Oil and Gas Lease Sale (“NCLS”) that identified parcels of land which the BLM may offer for oil and gas leasing at a competitive lease sale scheduled for September 12, 2017 (“September 2017 Lease Sale”). The NCLS provided formal notice of a 30-day public protest period ending on July 3, 2017, for the September 2017 Lease Sale.

On June 30, 2017, the BLM UTSO received a letter on behalf of the Wilderness Society and the

National Audubon Society (collectively “TWS”) protesting the inclusion of the following four parcels in the September 2017 Lease Sale:

Parcel Number	Serial Number
UT 001	UTU92485
UT 002	UTU92486
UT 003	UTU92487
UT 007	UTU92491

TWS protests the BLM offering these four parcels claiming that leasing these parcels would conflict with the adaptive management, prioritization, and net conservation gain requirements of the Greater Sage-Grouse Environmental Impact Statement (“EIS”) Record of Decision (“ROD”), the Utah Greater Sage-Grouse Approved Resource Management Plan Amendment (“ARMPA”), and Instruction Memorandum (“IM”) 2016-143. All four parcels are within Priority Habitat Management Areas (“PHMAs”).

First, TWS asserts that leasing these PHMA parcels “would conflict with the hard-trigger adaptive management requirements set forth in the” ARMPA. TWS contends that before leasing can proceed, the BLM must evaluate data and other scientific information and coordinate with other agencies to identify the casual factors of the population decline and adopt a corrective strategy. As discussed below, BLM has complied with the adaptive management strategy within the ARMPA by changing habitat prioritization and implementing other management actions.

Due to declines in the Sheeprocks population of greater sage-grouse, criteria was recently met for a “hard trigger” change in management. Accordingly, portions of the greater sage-grouse habitat identified in the ARMPA as General Habitat Management Areas (“GHMA”) were recently changed to PHMA, and the BLM made corresponding changes in management to reflect this higher prioritization. These management changes implemented an increased emphasis on habitat management (e.g., no surface occupancy (“NSO”) stipulations, imposition of a disturbance cap, and application of parcel prioritization guidance).

The Utah greater sage-grouse adaptive management strategy, found in Appendix I of the ARMPA, includes a stepped approach to be applied in the event a hard trigger is met. The first step is to implement the specific changes identified in Table I.1. The second step is reviewing “available and pertinent data” with partners in order to “determine the causal factor(s) and implement a corrective strategy” (ARMPA Appendix I page I-8). Contrary to what TWS asserts, there is no language in the ARMPA, its Appendix, or subsequent implementation guidance that requires a cessation of considering or implementing land uses while the review proceeds.

The BLM has complied with the adaptive management strategy by working with state and federal partners to determine if triggers were met. When the population trend in the ARMPA-mapped Sheeprocks PHMA area met the adaptive management hard trigger, the areas of GHMA in these lease parcels switched to PHMA to protect an adjacent lek complex. As described in the

September 2017 Oil and Gas Lease Sale Environmental Assessment (“September 2017 Lease Sale EA”) and the Greater Sage-Grouse Final EIS, this change in management affords these areas protection from direct impacts from fluid mineral development on public lands via inclusion of a NSO stipulation on any lease sold within PHMA. This additional protection to the habitat adjacent to the leks of concern is the direct result of implementing the adaptive management response described in the ARMPA.

Additionally, the BLM has already coordinated with partners through the state-run local working group, which has identified preliminary causal factors as habitat availability and predation. The BLM is in the process of evaluating data with its partners to identify if there are other causal factors and to determine if additional management changes may be necessary. While this evaluation is proceeding, the BLM will continue to conduct lease sales in accordance with its land use plan and analyze impacts to greater sage-grouse and its habitat in the appropriate environmental documents, as has been done with the September 2017 Lease Sale EA.

Second, TWS claims that the “BLM has not prioritized leasing outside of sage-grouse habitat, as required by the Greater Sage Grouse EIS ROD, the Utah ARMPA, and IM 2016-143.” The protest quotes the prioritization sequence described in IM 2016-143 and asserts that only prioritizing the order in which the BLM processes and analyzes lease nominations is inconsistent with the prioritization requirements of the EIS ROD, the ARMPA, and IM 2016-143. Additionally, TWS asserts that because the BLM did not describe “parcel specific factors” justifying either deferring the parcels or carrying them forward, as had been done in recent leasing EAs in Wyoming and Utah, the agency was not in compliance with IM 2016-143. As described below, there was no need to apply the prioritization sequence criteria because the relevant BLM staff were able to conduct the necessary analysis for all parcels.

IM 2016-143 notes that the BLM state offices will use the specified “Prioritization Sequence, parcel-specific factors, and the BLM’s workload capacity and other workload priorities as they determine work plans for the oil and gas leasing program.” The IM specifically states that BLM is to apply the parcel-specific factors, as appropriate and within its discretion, after it has evaluated nominated parcels in accordance with the prioritization sequence criteria. The IM also emphasizes that it “does not prohibit leasing or development in GHMA or PHMA as the ARMPA will allow for leasing and development by applying prioritizing sequencing, stipulations, required design features, and other management measures to achieve the conservation objectives and provisions in the [greater sage-grouse] Plans.” The IM further clarifies that the “guidance is not intended to direct the Authorized Officer to wait for all lands outside [greater sage-grouse] habitat areas to be leased or developed before allowing leasing within GHMAs, and then to wait for all lands within GHMAs to be leased before allowing leasing or development within the next habitat area (PHMA, for example).”

The BLM accepts parcel nominations each year on a quarterly basis, with each quarter being reserved for one BLM District Office. The resulting number of parcels nominated varies from District to District. A list of nominated parcels is sent by the State Office to the respective District Office to assess the degree of appropriate pre-lease sale analysis pursuant to the National

Environmental Policy Act and other applicable law. It is then up to the respective District Office to determine how many lease parcels its staff have the capability to process within the given time frames.

In the case of the nominated parcels sent to the West Desert District for the September 2017 Lease Sale, there were nine parcels within public lands managed by the Fillmore Field Office (“FFO”). Four of those parcels overlapped greater sage-grouse PHMAs. The sage-grouse implementation coordinator in the UTSO evaluated the parcels according to IM 2016-143 and determined that all parcels could be carried forward in the parcel list sent to the FFO.

The FFO staff had sufficient resources to process and analyze all nine parcels and conduct analysis of the parcels in the PHMA within the given time frame. Had the FFO parcel list been larger or if there were inadequate staff resources, the UTSO, in coordination with the FFO, could have trimmed the parcel list to a manageable size by excluding parcels in greater sage-grouse habitat in accordance with the prioritization sequence criteria and evaluation factors. However, for the September 2017 Lease Sale, there was no need to apply the prioritization sequence criteria because FFO staff were able to conduct the necessary analyses of all parcels. For this same reason, BLM did not discuss the parcel-specific factors in the EA.

Third, TWS contends these parcels should not be leased because the BLM failed to ensure a net conservation gain for the Sheeprocks population of greater-sage grouse. TWS claims that attaching lease notice UT-LN-131 to the leases does not sufficiently require mitigation that would ensure a net conservation gain as prescribed in the ARMPA. Because the subject parcels are covered by an NSO stipulation this mitigation requirement is not necessary.

TWS’ concern entirely overlooks the fact that any oil and gas development that may occur on these protested parcels will occur absent any surface occupancy or disturbance within the PHMA. As noted in the EA, applying an NSO stipulation ensures there will be no direct impacts to greater sage-grouse or its habitat on public lands designated as PHMA. The language in the ARMPA relating to net conservation gain, found in MA-SSS-3A, requires such mitigation for activities “that result in habitat loss and degradation.” Because the NSO stipulation will be applied to all greater sage-grouse habitat located within the protested parcels, there would be no habitat loss or degradation, making any further conditions aimed at meeting the net conservation gain requirement unnecessary for these parcels.

Although not required here, inclusion of the lease notice regarding the possibility of net conservation gain requirements is entirely consistent with language in BLM Handbook 1624, Planning for Fluid Mineral Resources, where it notes that field offices “are encouraged to include an Information Notice (43 CFR 3101.1-3), also referred to by the BLM as a Lease Notice, in the Notice of Competitive Lease Sale *to advise potential lessees of important resource concerns and the possibility of additional constraints at the time of permitting*” (BLM-H-1624, p. V-4, emphasis added). Because the specific actions needed to achieve a net conservation gain are unknown at the time of lease, they would have to be developed as appropriate at the time of permitting, making application via a lease notice the regulatory tool most consistent with the ARMPA requirement.

This application of a lease notice is also consistent with the ARMPA MA-MR-5 and MA-MR-7, where the minimization measures contained in MA-SSS-3, including mitigation to the net conservation gain standard, are to be applied through implementation decisions such as applications for permits to drill, conditions of approval, or master development plans. Applying the net conservation gain requirement in this fashion is entirely consistent with the definitions for conditions of approval and lease notices described in the glossary of BLM-H-1624. A condition of approval “may limit or amend the specific actions proposed by the operator. Conditions of Approval *minimize, mitigate*, or prevent impacts to public lands or other resources” (BLM-H-1624, page V-10, emphasis added). A lease notice “provides notice of existing *requirements* and may be attached to a lease by the authorized officer at the time of lease issuance to convey certain operational, procedural, or administrative *requirements...*” (BLM-H-1624, page V-10, emphasis added). Therefore, application of the net conservation gain via a lease notice is consistent with the BLM’s policies and language in the ARMPA.

For the reasons set forth above, I have determined that offering the four protested parcels at the September 2017 Lease Sale is in compliance with all applicable laws, regulations and policies. Accordingly, the protest submitted by TWS is denied with respect to the four parcels.

This decision may be appealed to the Interior Board of Land Appeals (“IBLA”) in accordance with the regulations contained in Title 43 of the Code of Federal Regulations (“CFR”) Part 4 and as described on the enclosed BLM Form 1842-1. In order for an appeal of this decision to be considered, a written notice of appeal must be filed with this office (as described on the enclosed Form 1842-1) within 30-days from receipt of this decision.

If you wish to file a petition for a stay pursuant to 43 CFR § 4.21 as to the effectiveness of this decision during the time that your appeal is being reviewed by the IBLA, a petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification in accordance with the standards listed in 43 CFR § 4.21(b), which include:

- (1) The relative harm to the parties if the stay is granted or denied;
- (2) The likelihood of the appellant’s success on the merits;
- (3) The likelihood of irreparable harm if the stay is not granted; and
- (4) Whether the public interest favors granting the stay.

Copies of the notice of appeal, petition for a stay, and a statement of reasons must also be submitted to each party named in this decision and to the Office of the Regional Solicitor, Intermountain Region, U.S. Department of the Interior at Federal Building Room 6201, 125 South State Street, Salt Lake City, UT 84138, at the same time that the original documents are filed in this office.

Please direct any questions regarding this decision to Sheri Wysong, Fluid Minerals Leasing Coordinator, at (801) 539-4067.

/s/ Kent Hoffman
Deputy State Director
Division of Lands and Minerals

Enclosure:

1. Form 1842-1

cc:

Office of the Solicitor, Intermountain Region
125 South State Street
Salt Lake City, Utah 84138

bcc:

Mmoffitt:MM:9/7/2017
Reading File